

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 14, 2005 Session

ANESTHESIA MEDICAL GROUP, P.C. v. PAUL BURAS

**Appeal from the Chancery Court for Davidson County
No. 02-3184-II Carol L. McCoy, Chancellor**

No. M2004-01599-COA-R3-CV - Filed on September 25, 2006

This case involves a claim for liquidated damages arising from the breach of a contract. The defendant resigned from his position with the plaintiff medical group, thereby triggering the provisions in the contract for repayment of an educational loan and of a sign-up bonus the plaintiff employer had given him. The court ordered repayment of those items, but held that the medical group was not entitled to the liquidated damages for early resignation set out in the contract, reasoning that those damages were punitive in nature and were an unenforceable penalty. The medical group appealed, arguing that the court should have awarded the liquidated damages, or in the alternative, the damages it actually suffered from the defendant's resignation. We reverse the trial court and award the plaintiff the liquidated damages under the contract.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Reversed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM B. CAIN, and FRANK G. CLEMENT, JR., JJ., joined.

Andrea Taylor McKellar, Katie A. Colley, Nashville, Tennessee, for the appellant, Anesthesia Medical Group, P.C.

J. Anthony Arena, Nashville, Tennessee, for the appellee, Paul Buras.

OPINION

I. THE AGREEMENT

Anesthesia Medical Group ("AMG") is a practice group of anesthesiologists which employs certified registered nurse anesthetists ("CRNAs"). Paul Buras is a registered nurse who wished to become a CRNA. He enrolled in the Middle Tennessee School of Anesthesia, which offers a twenty-seven month course of study to prepare its students to take the boards and meet the other requirements for CRNA status.

Shortly before beginning his course of study, Mr. Buras learned that AMG offered sponsorships to students enrolled in an accredited CRNA program. He contacted AMG and filled out an application. He was accepted into the sponsorship program and executed a contract on March 24, 1999. The contract was titled “LOAN AGREEMENT - CRNA EDUCATION PROGRAM,” and it included both loan and employment provisions.

The basic bargain between the parties and their contemplated exchange of consideration is outlined at the very beginning of the contract, immediately following the identification of the parties.

Student intends to pursue a course of training to become a certified registered nurse anesthetist (CRNA) through a full time education program leading to such certification.

AMG is willing to assist in providing funds for tuition for Student’s education, provided that Student agrees to work for AMG once Student has completed training and becomes a CRNA, upon the following terms and conditions.

The terms of the agreement included a loan from AMG to Mr. Buras of up to \$22,500 for tuition assistance in exchange for his promise to work for AMG once he completed his training and became a CRNA. Mr. Buras was obligated to begin full-time employment with AMG at the then-prevailing rate of \$85,000 per year¹ within thirty days of his certification as a nurse-anesthetist and to work for AMG for a period of three years. If he successfully completed the three years of employment, repayment of the loans would be forgiven.

If, however, Mr. Buras defaulted on his obligation by either failing to complete the program, failing to take or pass the certification examination, or failing to comply with any other provision of the agreement, repayment of the loans would be required, including the payment of interest. Under the terms of the agreement, the costs of collection in the event of default including court costs and attorney fees, would also have to be paid by Mr. Buras.

Failure to sign up with AMG after completing the program or failure to complete the three year obligation after signing up triggered both the obligation to repay the loan and additional payments under the contract. Failure to fulfill the employment commitment constituted an “event of default” and triggered additional payments by Mr. Buras to AMG of \$15,000 if he resigned or was terminated for cause within the first twelve months of employment, \$10,000 if the same occurred during the second twelve months, and \$5,000 if it occurred during the third twelve months.²

¹The salary amount was increased to \$87,750 by the time Mr. Buras started working for AMG.

²The only other “event of default” triggering these payments was the student’s failure to begin employment with AMG within thirty days after graduation.

The provision establishing these additional payments did not refer to them as liquidated damages, but the parties' choice of language does not determine the nature of the provision. *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 97 (Tenn. 1999) (holding that "[a] contractual provision need not explicitly include the term 'liquidated damages' to constitute a liquidated damages provision.")

The term "liquidated damages" means a sum agreed upon by contracting parties at the time they enter into their contract, to be paid as compensation for damages suffered by one party in the event that the other breaches the contract. *V.L. Nicholson v. Transcon Investment*, 595 S.W.2d 474, 484 (Tenn. 1980). Because the clear language of the provision in the contract before us makes the payment due or conditioned upon a breach, or in this contract an "event of default," it is clearly a liquidated damages provision. *Guiliano*, 995 S.W.2d at 97.

As further evidence of the parties' intent as to this provision, the rationale for the liquidated damages in addition to the loan repayment was enunciated in the agreement:

Student and AMG through their execution of this agreement hereby acknowledge that AMG has invested substantial time and monies in the development and training of Student and that Student's termination would detrimentally affect the operations of AMG. Student and AMG further agree that the harm to AMG would be difficult, if not impossible, to quantify and that the above amounts are reasonable and appropriate under the circumstances and fairly represent that loss which would be suffered by AMG. Payment shall be made within thirty (30) days of the date of separation.

Mr. Buras borrowed the full \$22,500 from AMG and executed two promissory notes to evidence his obligation. As he approached the completion of his course of study, he made a verbal commitment to take a position with the practice group. A letter from AMG, dated May 3, 2001, stated that "[u]pon your acceptance of the terms of this letter agreement, AMG will pay you a sign-on bonus in the amount of \$10,000 (\$5,000 at this time and \$5,000 closer to your graduation date). The bonus is a good faith bonus representing your intention to remain employed by AMG for a minimum period of two years."

The letter also set out a schedule for repayment of the bonus (called "liquidation fees") in the event of early termination of employment. The full \$10,000 was made payable in the event of termination within the first twelve months of employment; \$5,000 was payable for termination within the second twelve months. Mr. Buras signed the agreement.

Mr. Buras began working for AMG at Centennial Hospital on November 7, 2001. He subsequently graduated, passed his certification examination, and began working for AMG at Baptist Hospital. According to his testimony, it became clear to him fairly shortly after beginning at Baptist Hospital that working for AMG was not a good fit for him because, in his opinion, the attending anesthesiologists did not allow him to exercise his independent clinical judgment. On July 18, 2002, he sent a brief letter of resignation to the administrator of the practice group, announcing

his decision to pursue opportunities as a *locum tenens*³ and giving a one month notice that his last day of work would be August 16, 2002.

II. PROCEEDINGS IN TRIAL COURT

AMG filed a Complaint in the Chancery Court of Davidson County on October 25, 2002 to collect the money owed under the contract. Mr. Buras filed an Answer, which included the affirmative defense that the liquidated damages provision in the loan agreement “is a penalty provision and therefore void and unenforceable.” AMG filed a Motion for Summary Judgment and a Statement of Undisputed Facts. Since Mr. Buras admitted in his response that he had indeed breached his contract, the trial court granted AMG partial summary judgment, and ordered Mr. Buras to repay the loan, the sign-on bonus, and attorney fees and costs.⁴ The liquidated damages portion of the summary judgment motion was denied, and the matter was set for trial.

The trial was conducted on May 12, 2004. The court and the parties agreed at the outset that the only issue to be adjudicated was the question of damages caused by his early resignation.⁵ The only witnesses to testify at trial were Paul Buras and two employees of AMG: Diana Bird, its human resources manager, and Tammy Myers, its CFO.

Ms. Bird testified as to how AMG’s sponsorship program worked and why AMG chose to operate such a program. She explained that it was very difficult to find and retain enough CRNAs to fully staff an anesthesia practice and that the program was designed to help AMG secure the CRNAs it needed.⁶ She could not explain exactly how AMG had arrived at the amount of the liquidated damages in the contract because she was not part of the committee that made that decision.

She stated, however, that the liquidated damages helped AMG defray the expenses it incurred when a CRNA defaulted and that those expenses typically included payment of a *locum tenens* until a permanent replacement for the defaulting CRNA could be found and/or a fee to an agency for

³ In this context, a *locum tenens* is a temporarily employed CRNA, who is paid for work done as a nurse-anesthetist on a daily basis rather than receiving an annual salary.

⁴ AMG ultimately submitted an affidavit indicating its attorney fees amounted to \$17,669. In a post-trial proceeding, Mr. Buras argued that the attorney fees were not a reasonable charge for the work actually done. He cited four other cases which AMG’s attorneys litigated, and which he claimed involved very similar facts, thus giving those attorneys the opportunity to bill twice for the same work. The trial court found the attorney fees to be reasonable, and Mr. Buras does not challenge this finding on appeal.

⁵ Although at the beginning of the hearing the parties stated that the issue was liquidated damages, AMG had also requested actual damages if the liquidated damage provision were deemed unenforceable. On appeal, Mr. Buras does not assert that actual damages are not at issue because they were waived in the trial court.

⁶ Ms. Bird testified that AMG maintained a permanent advertisement in a professional journal for nurse anesthetists to recruit CRNAs and publicize its sponsorship program.

finding such a replacement. Proof of the expenses involved in replacing Mr. Buras was introduced during the testimony of Ms. Myers in the form of daily invoices from Nationwide Anesthesia Services, the private agency AMG uses to find and hire *locum tenens* to serve in the operating rooms of the six hospitals where it practices.

The invoices showed that *locum tenens* were paid between \$95 per hour and \$105 per hour after Mr. Buras stopped working for AMG. The practice group also incurred a \$10 per hour charge to Nationwide Anesthesia Services for each hour of *locum tenens* service, as well as a \$25 per day charge paid to the *locum tenens*, plus travel, meal and lodging expenses. If a *locum tenens* whose services had been secured through Nationwide Anesthesia Services decided to take a permanent position with AMG, the practice group would be obligated to pay a \$12,000 finder's fee to the agency. Ms. Myers testified that AMG used three different *locum tenens* to replace Mr. Buras during the fourteen weeks that followed his departure, before finding a permanent replacement for him, who began on November 25.

Ms. Myers calculated that AMG paid over \$62,000 to the *locum tenens* that replaced Mr. Buras in the interval after he resigned and before AMG was able to replace him. She further testified that the company would have paid Mr. Buras only about \$30,000 during the same period if he had stayed. Thus AMG's added cost for temporary replacements for Mr. Buras was about \$32,000. An additional element of damages was the time that AMG office staff members had to devote to the chore of finding and scheduling replacements for Mr. Buras, but the witness did not attempt to quantify this element. We note that if Mr. Buras were required to pay actual damages instead of the amount he agreed to pay and AMG agreed to receive in full payment, his liability would be greater.

For his part, Mr. Buras testified that when he signed the contract, he didn't realize that the \$15,000 payment obligation for early termination of employment was separate and apart from the requirement that he repay the loan in the event of default. He thought, rather, that it was just a restatement of a repayment schedule for the loan. He also denied that his resignation was motivated by financial reasons and insisted that adverse working conditions had led to his decision, which followed two days after working at Baptist Hospital for "several difficult days with several difficult physicians."

After closing arguments, the trial court announced its decision. The court cited the well-known principle that a contract provision for liquidated damages which amounts to a penalty against the breaching party is unenforceable. The court noted several features in the contract at issue from which it could infer a punitive intent on the part of AMG. The court accordingly found the \$15,000 liquidated damages to be an unenforceable penalty and ruled for Mr. Buras. This appeal followed.

III. BREACH AND DAMAGES

The trial court found that Mr. Buras had breached his agreement with AMG, and that finding is not challenged on appeal. Based on that finding, the trial court enforced part of the Loan Agreement, ordering payment of the loan amount and awarded attorney's fees "in accordance with the provisions of the Loan Agreement."

The question of interpretation of a contract is a question of law. *Guiliano*, 995 S.W.2d at 95. Therefore, the trial court's interpretation of a contractual document is not entitled to a presumption of correctness on appeal. *Id.*; *Angus v. Western Heritage Ins. Co.*, 48 S.W.3d 728, 730 (Tenn. Ct. App. 2000). This court must review the document ourselves and make our own determination regarding its meaning and legal import. *Hillsboro Plaza Enters. v. Moon*, 860 S.W.2d 45, 47 (Tenn. Ct. App. 1993). Our review is governed by well-settled principles.

"The central tenet of contract construction is that the intent of the contracting parties at the time of executing the agreement should govern." *Planters Gin Co. v. Fed. Compress & Warehouse Co., Inc.*, 78 S.W.3d 885, 890 (Tenn. 2002). The purpose of interpreting a written contract is to ascertain and give effect to the contracting parties' intentions, and where the parties have reduced their agreement to writing, their intentions are reflected in the contract itself. *Id.*; *Frizzell Constr. Co. v. Gatlinburg, L.L.C.*, 9 S.W.3d 79, 85 (Tenn. 1999). "The intent of the parties is presumed to be that specifically expressed in the body of the contract" *Planters Gin Co.*, 78 S.W.3d at 890. Therefore, the court's role in resolving disputes regarding the interpretation of a contract is to ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the language used. *Guiliano*, 995 S.W.2d at 95; *Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth Inc.*, 521 S.W.2d 578, 580 (Tenn. 1975). Where the language of the contract is clear and unambiguous, its literal meaning controls the outcome of contract disputes. *Planters Gin Co.*, 78 S.W.3d at 890.

Thus, courts defer to the contracting process by enforcing written contracts, which establish the rights and obligations of the parties, according to their plain terms without favoring either contracting party. *Cocke County Bd. of Highway Comm'rs v. Newport Utils. Bd.*, 690 S.W.2d 231, 237 (Tenn. 1985); *Hardeman County Bank v. Stallings*, 917 S.W.2d 695, 699 (Tenn. Ct. App. 1995). Courts must avoid rewriting an agreement under the guise of interpreting it. *Marshall v. Jackson & Jones Oil, Inc.*, 20 S.W.3d 678, 682 (Tenn. Ct. App. 1998). The courts will not make a new contract for parties who have spoken for themselves, *Petty v. Sloan*, 197 Tenn. 630, 640, 277 S.W.2d 355, 359 (1955), and will not relieve parties of their contractual obligations simply because these obligations later prove to be burdensome or unwise. *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 223 (Tenn. Ct. App. 2002).

Based upon these principles and the plain language of the Loan Agreement, we agree that Mr. Buras's voluntary termination of his employment before the expiration of the three-year period was a breach of the Agreement. As the portion of the Loan Agreement quoted earlier in this opinion makes clear, AMG loaned Mr. Buras tuition money only because he agreed to work for AMG for

three years after completion of the course work for CRNA certification. The Agreement defines an “event of default,” which includes resignation before the end of the three year period (“student fails to fulfill the required period of employment with AMG”). By signing the agreement, Mr. Buras agreed to pay AMG \$15,000 if he left employment within the first twelve months of the three year period in addition to paying back the loan. This additional payment was intended to compensate AMG for losses it suffered as a result of his failure to fulfill his term of employment.

As a general rule of law, a party who breaches a contract will be held liable for any damages to the non-breaching party caused by the breach. Compensatory damages are intended to compensate the wronged party for the loss or injury caused by the wrongdoer’s conduct. *Beaty v. McGraw*, 15 S.W.3d 819, 828-29 (Tenn. Ct. App. 1998). The purpose of damages in a breach of contract case is to place the injured party, as nearly as possible, in the same position it would have been in had the contract been performed. *Lamons v. Chamberlain*, 909 S.W.2d 795, 801 (Tenn. Ct. App. 1993); *Hennessee v. Wood Group Enters., Inc.*, 816 S.W.2d 35, 37 (Tenn. Ct. App.1991); *Wilhite v. Brownsville Concrete Co.*, 798 S.W.2d 772, 775 (Tenn. Ct. App.1990).

Although the trial court herein found that Mr. Buras had breached the loan agreement, it nonetheless relieved Mr. Buras of his promise because it found the additional payment, or liquidated damages, of \$15,000 to be an unenforceable penalty and not a reasonable estimate of damages. We also review that ruling de novo with no presumption of correctness.

IV. LIQUIDATED DAMAGES

The beginning point for any current day discussion of liquidated damages is the Tennessee Supreme Court’s holding in *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88 (Tenn. 1999). The Court’s reasoning in that case is important in determining the framework for analyzing a liquidated damages issue. Of particular significance are the reasons for and the consequences of the Court’s rejection of the “retrospective approach” applied by some courts, including the Tennessee Court of Appeals,⁷ in favor of the “prospective approach,” an alternative adopted by a number of other jurisdictions.

The Court noted that two important interests are at stake in a liquidated damages question: the freedom of parties to bargain for and agree upon terms in a contract and the limitations set by public policy. *Id.*, 995 S.W.2d at 100. In deciding that the prospective approach was the better one, the Court specifically stated that it chose that approach in large part because it gave greater consideration to the rights of parties to contract. *Id.*

⁷The Court cited as examples *Eller Bros., Inc. v. Home Fed. Sav. & Loan Assoc.*, 623 S.W.2d 624, 628 (Tenn. Ct. App. 1981); *Harmon v. Eggers*, 699 S.W.2d 159 (Tenn. Ct. App. 1985); *Beasley v. Horrell*, 864 S.W.2d 45, 50 (Tenn. Ct. App. 1993); and *Kimbrough & Co. v. Schmitt*, 939 S.W.2d 105,108 (Tenn. Ct. App. 1996), and noted that to the extent the Court of Appeals had adopted a retrospective approach, that approach was overruled. *Guiliano*, 995 S.W.2d at 99-100. The Court described that approach as applied by the Court of Appeals as including both a prospective review of the circumstances at the time of contract formation and a review of actual damages at the time of breach. *Id.* at 99. To the extent *Guiliano* overruled the retrospective approach and also overruled the reasoning used in that approach, we find these cases of questionable relevance.

The Court recounted the well-established principle, and Tennessee authority like that discussed earlier in this opinion, that recognizes the freedom of parties to agree upon terms that may not appear desirable to outsiders and the duty of the courts to refrain from interfering with the parties' agreement unless to enforce it would violate established public policy.⁸ *Id.*

As the Court noted, parties are free to agree to liquidated damages, and courts should presume that when parties have done so, they chose the certainty and efficiency provided by the inclusion of such a term in their agreement over the uncertainty and burden of requiring the non-breaching party to prove actual damages in the event of a default. In rejecting the retrospective approach, the Court stated:

We find it is unfair to require the non-breaching party to prove actual damages in cases where the parties agreed in advance to a liquidated damages provision. Such a requirement ignores the original intentions of the parties and defeats the purposes of stipulating in advance to potential damages.

Guiliano, 995 S.W.2d at 100.

One important result of the choice of the prospective approach is that the focus of the court's inquiry must be the estimation of potential damages and the circumstances existing at the time of contract formation. *Id.*, 995 S.W.2d at 98-99. "Under this approach, the amount of actual damages at the time of breach is of little or no significance to the recovery of liquidated damages."⁹ *Id.* at 99. We note that in *Guiliano*, there were no actual damages because the employee whose employment was terminated in breach of the contract had obtained another job at a higher salary. However, the Supreme Court enforced the liquidated damages provision because at the time of contract formation, it was a reasonable estimate (one year's salary) of the damages the employee could sustain.

Guiliano did not change the essential requirements of a valid and enforceable liquidated damages provision. Instead, it clarified the viewpoint from which courts are to analyze those requirements. The law continues to be that a liquidated damages provision will be upheld if the amount of such damages bears a reasonable relationship to the amount of actual damages that would likely be sustained in the event of a breach and if the actual amount of damages would be difficult to determine or prove. Conversely, liquidated damages will not be upheld if they are deemed to

⁸In general, competent parties are free to bargain for and agree to contract terms, and the courts will not concern themselves with the wisdom or folly of such contracts, but will enforce them in accordance with the intentions of the parties. *Chapman v. Chapman Drug Co.*, 341 S.W.2d 392, 398 (Tenn. 1960).

⁹Under the rejected "retrospective approach," however, the actual damages at the time of breach remain relevant in determining whether the original estimation was reasonable. *Id.* For example, if the liquidated sum greatly exceeds the actual damages, courts that follow the "retrospective approach" will treat the liquidated sum as a penalty and limit recovery to actual damages. *Id.*, at 99.

constitute a penalty¹⁰ against the breaching party rather than a reasonable way to guarantee compensation for damages to the non-breaching party. *Guiliano*, 995 S.W.2d at 98.

Under *Guiliano*, both requirements should be judged as of the time of the contract formation. At that time, the parties are making a projection or estimation of the amount of damages the non-breaching party will incur in the event of default.

If the liquidated sum is a reasonable prediction of potential damages and the damages are indeterminable or difficult to ascertain **at the time of contract formation**, then courts following the prospective approach will generally enforce the liquidated damages provision.

Id., 995 S.W.2d at 99 (emphasis added).

In the present case, at the time the contract was signed it was clearly foreseeable, and in fact likely, that AMG would suffer damages if Mr. Buras did not complete his three-year employment commitment. The reason AMG offered the education loan was to induce students to agree to work for AMG for a specified term, allowing AMG to anticipate and schedule for its CRNA needs in an environment where such trained people were in great demand. Consequently, if AMG found itself unable to reap the benefits of that certainty, it would incur costs stemming from the need to find temporary and permanent replacements.

Among those costs were: costs associated with acquiring the services of *locum tenens* with total costs substantially higher than for a salaried CRNA; potential agency fees for a permanent replacement; and administrative time and effort spent on making sure the replacement needs were met that could otherwise have been spent on something else. Thus, the fact that AMG would be damaged by Mr. Buras's failure to fulfill his employment commitment and even the likely elements of those damages were known at the time of contract formation.

However, the actual amount of damages that would result from Mr Buras's early resignation could not be accurately predicted at the time of contract formation. It could not then be ascertained how long it would take to find a permanent replacement, the actual differential in his salary at the time of his resignation and the prevailing costs at that time of *locum tenens*, the exact amount of any agency fee for a permanent replacement, and any increase in the salary that would have to be paid to a permanent replacement. Consequently, the actual damages that AMG would suffer were indeterminable or difficult to ascertain at the time of contract formation.

¹⁰Liquidated damages provisions are subject to scrutiny because of the public policy against forfeitures. *Kimbrough & Co. v. Schmitt*, 939 S.W.2d at 108; *Harmon v. Eggers*, 699 S.W.2d at 163.

The remaining requirement is that the liquidated damages agreed upon by the parties be a reasonable prediction of potential damages. Diane Bird testified that on average it took three months to replace one salaried CRNA with another. The salaries of CRNAs and the cost of *locum tenens* services both rose on a regular basis. The figure of \$15,000 for liquidated damages was a reasonable prediction, based on identifiable and reasonable factors, and is certainly not disproportionate in AMG's favor. In fact, the liquidated amount was favorable to the student. We can find no basis for determining that it was a penalty designed to punish for the breach rather than a reasonable attempt to compensate AMG for damages it would likely incur from a breach.

Accordingly, we find that the liquidated damages provision of the Loan Agreement was enforceable. Enforcement gives effect to the original intentions of the parties and furthers the goals and purposes of stipulating in advance to potential damages.

V. THE NATURE OF THE AGREEMENT

As stated earlier, AMG argued, in the alternative, that if the liquidated damages provision of the agreement were found to be unenforceable, it was entitled to actual damages of \$32,000.¹¹ Although our determination that the liquidated damages provision is enforceable makes consideration of that argument unnecessary, we feel compelled to address arguments made by Mr. Buras in the context of the actual damages question. Mr. Buras argues that the Agreement does not include an enforceable employment contract as a basis for disputing AMG's entitlement to actual damages. However, if there was no enforceable agreement by Mr. Buras to work for AMG for three years, then AMG would not be entitled to any damages for his failure to do so, whether the amount was stipulated or proved. Therefore, we must briefly address those issues.

Mr. Buras argues that the Loan Agreement is not an enforceable employment agreement and/or that the damages AMG claims (*i.e.*, the cost of replacement CRNAs) did not result from his breach of the loan portion of the agreement. Mr. Buras argues that we should consider the agreement to be as its title suggests, a simple loan contract. Conversely, AMG argues that the agreement should be considered an employment contract. AMG argues it is not a bank or a financial institution which depends upon the collection of interest as its source of profit. It offers loans for the sole purpose of attracting qualified personnel to staff the operating rooms in the hospitals it services.

¹¹The trial court did not specifically address the actual damages issue in its final order, but did not award such damages, implicitly denying AMG's request. The trial court's comments from the bench provide some insight into the basis for that denial. The court questioned the mutuality of obligation regarding the employment provisions of the loan agreement. However, the court also stated that "Had this been a binding agreement on both parties, this Court would find that an individual who breaches the contract after executing it and agreeing to work for them with a guarantee of employment may have been subject to a valid liquidated damages provision. That is not this contract." Since the trial court specifically found that Mr. Buras had breached the Loan Agreement and awarded AMG a judgment for repayment and other costs related to the breach as allowed by the agreement, we interpret the court's statement as a determination that those provisions dealing solely with the loan and its repayment were enforceable, but that the provisions dealing with employment were not.

Mr. Buras argues, however, that we cannot consider the contract at issue to be an employment contract, because it does not obligate AMG to hire him at the conclusion of his training and it permits AMG to terminate his employment at any time without cause upon thirty days notice. He thus claims that he was an at-will employee with the right to quit his job at any time without penalty. *See Crews v. Buckman Laboratories Intern, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002); *Chism v. Mid-South Milling Co.*, 762 S.W.2d 552, 555 (Tenn. 1988).

When we examine Mr. Buras's arguments closely, he is actually suggesting that there was no consideration for his promise to work for AMG for three years, because there was no corresponding unconditional promise by AMG to employ him for that period of time.¹² It is axiomatic that adequate consideration is necessary for the validity of any contract, *Dobbs v. Guenther*, 846 S.W.2d 270, 276 (Tenn. Ct. App. 1992). *Price v. Mercury Supply Co., Inc.*, 682 S.W.2d 924, 933 (Tenn. Ct. App. 1984). Conversely, a promise unsupported by consideration is unenforceable, and is characterized as a mere *nudum pactum*. *Williams v. Maremont Corp.*, 776 S.W.2d 78, 80 (Tenn. Ct. App. 1988); *Helton v. Reynolds*, 640 S.W.2d 5, 9 (Tenn. Ct. App. 1982).

We note, however, that "[t]he fact that an agreement is optional as to one of the parties, and obligatory as to the other, does not destroy its mutuality. If there is sufficient consideration on both sides, it is mutual." *Jeffers v. Hawn*, 212 S.W.2d 368, 370 (Tenn. 1948)(quoting *Cherry v. Smith*, 22 Tenn 19, 24 (1842)). *See also Dobbs v. Guenther*, 846 S.W.2d 270, 276 (Tenn. Ct. App. 1992). Consideration can be in the form of either a benefit to the party making the promise, or a detriment to the party to whom the promise is made. *Galleria Associates, L.P. v. Mogk*, 34 S.W.3d 874, 876 (Tenn. Ct. App. 2000); *Calabro v. Calabro*, 15 S.W.3d 873, 876 (Tenn. Ct. App. 1999).

The advancement of tuition money in the form of a loan is only part of the consideration that AMG promised for the services of Mr. Buras after his certification. AMG agreed to forgive repayment of the loan if Mr. Buras completed his three years of employment. Forgiveness of the loan under specified circumstances constitutes both a benefit to Mr. Buras and a detriment to AMG, and it amounts to additional valid consideration. It is true that if AMG had decided not to hire Mr. Buras after he completed his training, it would not have been exposed to any legal liability for breach of contract. It would, however, have lost its right to repayment of the money it invested, pursuant to a provision in the contract that reads, "In the event that upon graduation AMG does not wish to employ student, AMG will not expect any reimbursement for educational fees paid to Student and the Promissory Note will be cancelled." Of course, if Mr. Buras had completed three years employment with AMG as agreed, that would also have served to cancel his repayment obligation.

It appears to us that the agreement in dispute has been carefully crafted to balance the obligations of the parties to each other under a wide variety of possible circumstances. It must be viewed in its entirety, not as separate, unrelated sets of promises. When so viewed, it is clear there were mutual obligations and considerations. Both parties obtained benefits and both gave

¹²Of course, AMG did hire him, gave him a signing bonus when he reaffirmed his commitment to work for it, and put him to work as a CRNA at the prevailing salary.

consideration. It was an arrangement for an education loan with subsequent employment. Mr. Buras obtained a loan that allowed him to become trained and certified in an area with high demand and apparently lucrative salaries. AMG expected to obtain Mr. Buras's services as a CRNA for three years and could plan its other hiring and recruitment efforts accordingly. The Agreement is enforceable, and the non-breaching party is entitled to damages. Thus, when Mr. Buras breached his promise, he became liable for damages resulting from the breach.

VI.

The judgment of the trial court is reversed, and AMG is awarded judgment for \$15,000 in liquidated damages. We remand this case to the Chancery Court of Davidson County for further proceedings that may be necessary, consistent with this opinion. Tax the costs on appeal to the appellee, Paul Buras.

PATRICIA J. COTTRELL, JUDGE